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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL HERNANDEZ,

Defendant and Appellant.

D074145

(Super. Ct. No. MH106436)

APPEAL from a judgment of the Superior Court of San Diego County, Howard H. Shore, Judge. Affirmed.

Richard Schwartzberg, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and James M. Toohey, Deputy Attorneys General, for Plaintiff and Respondent.

Daniel Hernandez appeals after a jury trial in which he was found to be a sexually violent predator (SVP) under the Sexually Violent Predators Act (SVPA) (Welf. & Inst.

Code, § 6600 et seq.)<sup>1</sup> Pursuant to section 6600, subdivision (a)(3), which specifically authorizes the admission into evidence of a wide range of documents to prove the existence and details of qualifying sexually violent offenses, the trial court admitted into evidence numerous documents relating to Hernandez's five qualifying sexually violent offenses. Further, the trial court permitted an expert witness to testify about the contents of those documents. Although acknowledging that our Supreme Court has held otherwise in *People v. Otto* (2001) 26 Cal.4th 200 (*Otto*), Hernandez contends that section 6600, subdivision (a)(3) violates an alleged SVP's right to due process by improperly allowing the admission of unreliable hearsay evidence. Accordingly, Hernandez argues that the documents relating to his qualifying sexually violent offenses should not have been admitted, and that the expert witness should not have been permitted to describe the facts contained in those documents.

We reject Hernandez's argument based on our Supreme Court's holding in *Otto* that section 6600, subdivision (a)(3) does not violate a defendant's right to due process. Accordingly, we affirm the judgment.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Overview of the SVPA*

To put the proceedings against Hernandez into context, we begin with an overview of the SVPA.

The SVPA allows for the involuntary civil commitment of certain offenders following the completion of their prison terms if they are found to be sexually violent predators. Under the SVPA, the People may file a petition to seek to confine and treat SVPs "until their dangerous disorders recede and they no longer pose a societal threat." (*Moore v. Superior Court* (2010) 50 Cal.4th 802, 815.) "The special proceedings that ensue after the People file such a petition are civil in nature, but an SVP defendant is afforded many of the same procedural protections afforded criminal defendants." (*People v. Burroughs* (2016) 6 Cal.App.5th 378, 383-384.)

"An alleged SVP is entitled to a jury trial, at which the People must prove three elements beyond a reasonable doubt: (1) the person has suffered a conviction of at least one qualifying 'sexually violent offense,' (2) the person has 'a diagnosed mental disorder that makes the person a danger to the health and safety of others,' and (3) the mental disorder makes it likely the person will engage in future predatory acts of sexually violent criminal behavior if released from custody." (*People v. Yates* (2018) 25 Cal.App.5th 474, 477 (*Yates*).)

In establishing the first element, a crime is a "qualifying 'sexually violent offense' " (*Yates, supra*, 25 Cal.App.5th at p. 477) if it is listed in section 6600,

subdivision (b), and—unless committed on a child under age 14—is "committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, . . . and result[s] in a conviction or a finding of not guilty by reason of insanity." (§ 6600, subd. (b).)

As relevant to the issues presented in this appeal, the SVPA contains an exception to the hearsay rule that applies when the People introduce evidence to establish the existence of a sexually violent offense to satisfy the first element, allowing the broad use of documentary evidence. (*Otto, supra*, 26 Cal.4th at pp. 206-209; § 6600, subd. (a)(3).) "Under section 6600, subdivision (a)(3), the People may prove the first element—the existence and details underlying the commission of the predicate offense(s)—'by introducing "documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals." ' " (*Yates, supra*, 25 Cal.App.5th at p. 477.) This "broad hearsay exception for the documentary evidence described in the statute" exists "in order 'to relieve victims of the burden and trauma of testifying about the details of the crimes underlying the prior convictions,' which may have occurred many years in the past." (*Yates*, at pp. 477-478.)

"The second and third elements of the SVPA require a link between a finding of future dangerousness and 'a currently diagnosed mental disorder characterized by the inability to control dangerous sexual behavior.' . . . Commitment as an SVP requires proof that a defendant 'is likely to engage in future predatory acts' of sexually violent

criminal behavior. . . . A person is likely to engage in sexually violent criminal behavior if 'the person charged as a sexually violent predator poses a substantial danger, that is, a serious and well-founded risk, of committing a sexually violent predatory crime if released from custody.' " (*People v. White* (2016) 3 Cal.App.5th 433, 448, citations omitted.)

B. *The Proceedings Against Hernandez*

After the San Diego County District Attorney filed a petition for involuntary treatment of Hernandez as an SVP under the SVPA (§ 6600 et seq.), a jury trial was held, at which Hernandez was found to be an SVP.

As relevant to the issues presented here, at trial the People presented evidence of five qualifying sexually violent offenses to satisfy the first element required by the SVPA. The qualifying offenses consisted of the following: (1) a knifepoint rape and robbery in Los Angeles County in 1977; (2) a knifepoint attempted rape and attempted oral copulation in Cook County, Illinois, in 1977; (3) a knifepoint rape in Los Angeles County in 1983; (4) a knifepoint rape in Orange County in 1983; and (5) two counts of rape and two counts of forced oral copulation of a minor involving a 13-year-old girl, all accomplished at knifepoint in San Diego County in 1983. The evidence of the five qualifying sexually violent offenses was presented primarily through the testimony of an expert witness, clinical psychologist Douglas Korpi, who described the details of Hernandez's qualifying sexually violent offenses based on documents that he reviewed relating to Hernandez's convictions. In addition, pursuant to section 6600, subdivision (a)(3) the trial court admitted into evidence a wide range of documents

concerning the qualifying sexually violent offenses. Those documents included a Penal Code section 969b prison packet, probation officer reports, a police report, and preliminary hearing transcripts.

Several other witnesses testified at trial, and the jury returned a verdict finding that Hernandez is an SVP. The trial court ordered Hernandez's indeterminate commitment to the State Department of State Hospitals.

## II.

### DISCUSSION

Hernandez contends that the trial court violated his right to due process when it relied upon section 6600, subdivision (a)(3) to admit the documents relating to Hernandez's five qualifying sexually violent offenses.<sup>2</sup>

In relevant part, section 6600, subdivision (a)(3) states, "The details underlying the commission of an offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals." (§ 6600, subd. (a)(3).) By enacting this provision, the Legislature "endorsed the use of multiple-level-hearsay statements that do not otherwise fall within a hearsay exception." (*Otto, supra*, 26 Cal.4th at p. 208.)

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<sup>2</sup> "Because civil commitment involves a significant deprivation of liberty, a defendant in an SVP proceeding is entitled to due process protections." (*Otto, supra*, 26 Cal.4th at p. 209.)

Here, Hernandez contends that "section 6600, subdivision (a)(3) should be held to violate Due Process because it fails the requirements [that] a new hearsay exception not place at risk the erroneous deprivation of liberty through an inherently unreliable mechanism." Further, Hernandez contends that *if* we accept his argument that the documentary evidence relating to his qualifying sexually violent offense should not have been admitted because section 6600, subdivision (a)(3) violates constitutional due process rights, then it was also improper for the trial court to permit expert witness Korpi to describe the contents of those documents during his testimony.<sup>3</sup>

As Hernandez acknowledges, the same due process challenge that he makes to section 6600, subdivision (a)(3) has already been rejected by our Supreme Court in *Otto*, *supra*, 26 Cal.4th 200. In *Otto*, our Supreme Court considered the appellant's contention that under section 6600, subdivision (a)(3) "the admission of multiple hearsay that does not fall within any previously established hearsay exception . . . violates his due process

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<sup>3</sup> For this argument, Hernandez relies on *People v. Sanchez* (2016) 63 Cal.4th 665, which held that "[w]hen any expert relates to the jury case-specific out-of-court statements, and treats the content of those statements as true and accurate to support the expert's opinion, the statements are hearsay." (*Id.* at p. 686.) Under *Sanchez*, although an "expert may still *rely* on hearsay in forming an opinion, and may tell the jury *in general terms* that he did so" (*id.* at p. 685), an expert may not "relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Id.* at p. 686.) "The *Sanchez* rule applies to civil SVP proceedings." (*People v. Bocklett* (2018) 22 Cal.App.5th 879, 890.) Here, Hernandez argues that if the documents relating to his qualifying sexually violent offenses were not properly admitted because the hearsay exception in section 6600, subdivision (a)(3) violates the right to due process, then Korpi's expert testimony describing the facts set forth in those hearsay documents was improper under *Sanchez* because it related hearsay statements that were not otherwise properly admitted into evidence or covered by a hearsay exception.

right to confrontation and 'concomitant right to be convicted only if the prosecution proves its case by reliable evidence.' " (*Otto*, at p. 209.) After closely examining all of the relevant factors, *Otto* concluded that the admission of hearsay documents pursuant to section 6600, subdivision (a)(3) did not violate an alleged SVP's right to due process. (*Otto*, at pp. 210-215.)

We are bound to follow our Supreme Court's opinion in *Otto*. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 ["The decisions of this court are binding upon and must be followed by all the state courts of California. . . . Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court."].) Accordingly, we reject Hernandez's contention that the admission of documents relating to his qualifying sexually violent offenses pursuant to section 6600, subdivision (a)(3) violated his right to due process.<sup>4</sup> As we reject Hernandez's challenge to the constitutionality of section 6600, subdivision (a)(3), we also reject Hernandez's argument that pursuant to *Sanchez, supra*, 63 Cal.4th 665, expert witness Korpi should not have been permitted to describe the contents of the documents relating to Hernandez's qualifying sexually violent offenses on the ground that those documents constituted inadmissible hearsay.

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<sup>4</sup> Although Hernandez acknowledges that we are bound to follow our Supreme Court's holding in *Otto, supra*, 26 Cal.4th 200, he invites us to evaluate and criticize our Supreme Court's conclusion. We decline to do so.



DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

DATO, J.